

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|-------------------------|---|----------------------|
| DONALD BLACKBEY, |) | |
| |) | |
| Plaintiff, |) | 8:04cv48 |
| |) | |
| vs. |) | MEMORANDUM AND ORDER |
| |) | |
| ROBERT HOUSTON, et al., |) | |
| |) | |
| Defendants. |) | |

This matter is before the court on the following motions filed by the plaintiff, Donald Blackbey: (1) filing no. 83, the Motion for Reconsideration of order denying appointment of counsel; (2) filing no. 90, the Motion for Status of Case; and (3) filing no. 94, the Motion for Appointment of Counsel. In addition, the court has received a document entitled Motion for Witness[es] to Appear at Trial. That document will be docketed as the plaintiff's List of Witnesses and Proposed Testimony. When the item has been docketed, the Clerk of Court shall send a copy of the docket sheet to the plaintiff.

Requests for Appointment of Counsel

Unlike criminal prosecutions, the court cannot routinely appoint counsel in civil cases. In Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996), the Eighth Circuit Court of Appeals explained: "Indigent civil litigants do not have a constitutional or statutory right to appointed counsel.'... The trial court has broad discretion to decide whether both the plaintiff and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff's ability to investigate the facts and present his claim." (Citations omitted.) At this time, the plaintiff appears capable of representing his own interests, and he has rejected the attorney previously appointed to assist him. Filing nos. 83 and 94 are denied.

Motion for Status

In filing no. 90, the plaintiff inquires whether the court has received his Answer to the defendants' Motion for Summary Judgment. The document has been received and has been docketed as filing no. 89. Chief Judge Joseph F. Bataillon will decide the summary judgment motion in the ordinary course of the court's business. Filing no. 90 is granted insofar as this Memorandum and Order reports the status of this litigation.

IT IS THEREFORE ORDERED:

1. That filing no. 83, the plaintiff's Motion for Reconsideration, is denied;

2. That filing no. 90, the plaintiff's Motion for Status of Case, is granted insofar as this Memorandum and Order reports the status of the litigation, and filing no. 90 is otherwise denied;

3. That filing no. 94, the plaintiff's Motion for Appointment of Counsel, is denied;

4. That the court has received a document entitled Motion for Witness[es] to Appear at Trial; the document will be docketed as the plaintiff's List of Witnesses and Proposed Testimony; and when the document has been docketed, the Clerk of Court shall send a copy of the docket sheet to the plaintiff.

DATED this 2ND day of June, 2005.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge